

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

INTERACTIVE PLAY DEVICES LLC, a
Texas limited liability company,

Plaintiff,

v.

SPIN MASTER LTD., a foreign corporation,
Defendant.

CIVIL ACTION FILE NO.

6:20-cv-00066

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

1. This is an action for patent infringement under 35 U.S.C. § 271, et seq., by Interactive Play Devices LLC (“IPD”) against Spin Master, Ltd. (“Spin Master” or the “Defendant”) for infringement of U.S. Patent No. 7,491,108 (the “108 Patent”). A true and correct copy of the 108 Patent (also referred to as the “Ghaly Patent”) is attached hereto as **Exhibit A**.

THE PARTIES

2. IPD is a limited liability company formed under the laws of Texas with its registered office address located in Austin, Texas. IPD is the owner by assignment of the Ghaly Patent.

3. Upon information and belief, Spin Master is a corporation existing under the laws of Canada with its headquarters located in Toronto, Ontario, CN. Since 2016, Spin Master has offered for sale, sold and/or is presently offering for sale and selling interactive robotic products for sale including the Hatchimals. These products are also referenced herein as the Infringing Products.

4. Hatchimals are electronic toys encased in a disposable plastic housing that is designed to look like an egg. According to Spin Master, the user has to pick up the egg and rub the bottom to encourage the toy to start pecking at the egg to break through. The user can also tap gently on the shell and the toy will tap back. A user must interact with the egg for a certain period of time before the toy will respond and begin hatching.

5. Once hatched, a Hatchimal is ready to play and grow. “Give your Hatchimal a name and raise it through 3 stages: from baby, to toddler, to kid. At each stage they’ll sing ‘Hatchy Birthday’! Hatchimals really walk, talk, dance, play games, and more.”

<https://spinmastersupport.helpshift.com/a/hatchimals/?s=general-faqs&f=what-is-a-hatchimal&p=web>

6. The Hatchimal includes at least one of a switch, a pressure switch and a sound activated sensor. For example, the Hatchimal detects when a user is rubbing the shell of the Hatchimal. The Hatchimal also responds to sound, such as clapping.

7. Spin Master is in the business of selling and offering for sale in the United States, including through various retail stores (e.g., Target, Walmart) physically located in this judicial district, as well as intentionally selling into this State and this judicial district through various interactive web sites, including its own interactive web site (www.shop.spinmaster.com) the Infringing Products.

8. Spin Master has therefore intentionally placed the Infringing Products into the stream of commerce knowing that they were to be offered for sale in Texas, including in this judicial district. Upon information and belief, this includes specific sales and offers for sale of

Infringing Products into Texas and into this judicial district through its own www.shop.spinmaster.com web site.

PERSONAL JURISDICTION AND VENUE

9. This is an action for infringement of a United States patent arising under 35 U.S.C. §§ 271, 281, and 284–85, among others. This Court has subject matter jurisdiction of the action under 28 U.S.C. §§ 1331 and 1338(a).

10. Spin Master has availed itself of the privilege of doing business in Texas, including in this judicial district. Upon information and belief, SpinMaster has regular and established places of business in Texas, including within this judicial district.

11. Spin Master has furthermore hired employees who work in this judicial district who advance the sale of its products, including sales of the Infringing Products, by giving advice on store displays/planograms and assisting them with inventory management advice in order to minimize out of stocks.

12. This Court has personal jurisdiction over Spin Master in this action because Spin Master has committed acts within the Western District of Texas giving rise to this action and has established minimum contacts with this forum such that the exercise of jurisdiction over Spin Master would not offend traditional notions of fair play and substantial justice.

13. Spin Master, directly and through subsidiaries or intermediaries (including distributors, retailers, and others), has committed and continues to commit acts of infringement in this district by offering for sale and making sales of Infringing Products, and supporting the efforts of its retail customers to do the same.

14. Venue is proper pursuant to 28 U.S.C. §§ 1391 and 1400(b) because Spin Master has committed acts of infringement of the Ghaly Patent by offering for sale and selling Infringing Products into Texas and specifically into this judicial district on its interactive web Site, which offers or has offered the Infringing Products for sale, and which is accessible in this judicial district.

15. Spin Master also derives benefits from its presence in the district, both physical and online through its interactive web site, including but not limited to sales revenue received due to sales activity in this district. This revenue includes sales from its web site, other web sites selling its products, and sales by its retail partners with stores located in this judicial district.

16. Spin Master is subject to this Court's specific and general personal jurisdiction under due process and/or the Texas Long Arm Statute due at least to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct in Texas, and/or deriving substantial revenue from goods and services provided to individuals in Texas, including this district.

COUNT I

(Infringement of the 108 Patent)

17. Count I incorporates the contents of the preceding paragraphs 1-16 as if restated fully herein.

18. Spin Master makes, sells and offers for sale the Infringing Products, including Pengualas, Draggles, Owlicorns, Burtles, and Bearakeets, among others. Unless

otherwise noted, all of these varieties possess the same features, functions and components described herein with respect to the 108 Patent.

19. Each of the Hatchimals has a protective exterior housing with a motor and gearbox (connected to wheels located under the bottom of the exterior housing, not visible in the picture below), interior computer components (e.g., a circuit board containing a microprocessor and memory), and wires connecting the computer components to external sensors and the gearbox as illustrated by the following picture of a disassembled Hatchimal.



<http://blog.tekkies.co.uk/2017/02/hatchimal-dissassembly.html>

20. Among the interactions between user and Hatchimal is teaching the Hatchimal to talk and to walk. According to SpinMaster:

Support / After Hatching FAQs / Question

How do I teach my Hatchimal to talk?

Your Hatchimal™ must be in **Toddler** or **Kid** stage to learn to talk.

1. Press and Hold your Hatchimal™'s belly.
2. Your Hatchimal™ will say "Hello!"
3. Continue to hold the belly while you speak.
4. Release the belly to hear your Hatchimal™ repeat what you've said!

Your Hatchimal™ will remember the last thing you've recorded and repeat it randomly while playing in autonomous mode.

<https://spinmastersupport.helpshift.com/a/hatchimals/?p=web&s=after-hatching-faqs&f=how-do-i-teach-my-hatchimal-to-talk&l=en>

Support / After Hatching FAQs / Question

How do I teach my Hatchimal to walk?

Your Hatchimal™ must be in **Toddler** or **Kid** stage to learn to walk.

1. Press your Hatchimal™'s belly repeatedly until its eyes flash WHITE.
2. Wait 3 seconds or pat your Hatchimal™'s head to enter.
3. When its eyes are solid WHITE you can clap to your Hatchimal™.
4. Clap once to make your Hatchimal™ move forward.
5. Clap two or more times to make your Hatchimal™ spin.

Careful! Too much spinning and your Hatchimal™ can get dizzy!

To exit at any time, press your Hatchimal™'s belly.

<https://spinmastersupport.helpshift.com/a/hatchimals/?p=web&s=after-hatching-faqs&f=how-do-i-teach-my-hatchimal-to-walk&l=en>

21. The Hatchimal tracks a certain amount of interaction with a user before it can proceed to a next stage to learn new activities. Accordingly, it processes a user's responses to determine the level of interaction the user has engaged in with the Hatchimal. This is illustrated by the following page from the Hatchimals' instruction manual:

NOW THAT YOUR HATCHIMAL HAS HATCHED, YOU MUST RAISE IT FROM BABY, TO TODDLER, TO KID.

RAINBOW LIGHTS APPEAR AND I SING "HATCHI BIRTHDAY" WHEN I MOVE FROM ONE STAGE TO ANOTHER.

I USE COLOR AND SOUND TO TELL YOU WHAT I WANT OR NEED:

COLOR	WHAT IT MEANS	WHAT TO DO
PINK	I NEED A CUDDLE	PET MY HEAD.
RED	I AM UPSET	PET MY HEAD TO CALM ME DOWN.
ORANGE	I NEED TO BURP	PAT MY HEAD OR TILT ME FORWARD.
FLASHING ORANGE	I HAVE THE HICCUPS	MAKE A LOUD NOISE TO SCARE THEM AWAY.
YELLOW	I AM EXPLORING	PLAY WITH ME IN DIFFERENT WAYS.
GREEN	I AM SICK	PET MY HEAD, TILT ME FORWARD OR SQUEEZE MY BELLY.
TEAL	"LEARN TO TALK"	PRESS AND HOLD MY BELLY. AFTER I SAY HELLO, SAY SOMETHING, THEN RELEASE MY BELLY.
LIGHT BLUE	I AM COLD	RUB MY HEAD OR SQUEEZE MY BELLY TO WARM ME UP.
DARK BLUE	I AM SCARED	PET MY HEAD TO COMFORT ME OR CLAP TO SCARE ME MORE.
WHITE	I AM GOING TO SLEEP	SQUEEZE MY BELLY TO WAKE ME UP.


22. According to the instruction manual, the Hatchimal uses the information it obtains from interacting with a user to progress to a next stage, such as the toddler stage, wherein the Hatchimal learns different activities, such as talking, walking and dancing.

TEACH ME! - TEACH ME TO WALK, TALK AND DANCE.

Access and cycle through the MENU, by PRESSING my BELLY.

When you see the color and hear the sound effect of the game you want, WAIT THREE SECONDS or PAT my HEAD to enter.

To EXIT a game at any time, PRESS my BELLY.



www.youtube.com/hatchimals

"LEARN TO TALK" - TEAL

PRESS and HOLD my belly to TEACH ME TO TALK. My light will change to TEAL. AFTER I say HELLO, SAY something, then RELEASE my BELLY. I will REPEAT what you say!

"LEARN TO WALK" - FLASHING WHITE

When I ENTER "LEARN TO WALK", I will say OKAY and my LIGHT will change to SOLID WHITE. SOLID WHITE LIGHT means I am WAITING for a COMMAND. ONE CLAP makes me move FORWARD. TWO or more CLAPS make me SPIN. Careful, I might get DIZZY.

DANCE MODE! - FLASHING PURPLE

When I ENTER DANCE MODE, I will say OKAY and PLAY MUSIC. When I am dancing, PAT my HEAD to play a DRUM BEAT. To PAUSE my MUSIC, turn me UPSIDE DOWN, then RIGHT SIDE UP. To PLAY the MUSIC AGAIN, turn me UPSIDE DOWN and RIGHT SIDE UP AGAIN.

NURTURE PLAY

All the NURTURE PLAY from STAGE 3 is still available. See Page 10.

23. Each of the Hatchimals is therefore an interactive play device for interacting between the device and the user comprising:

a housing,

a microprocessor with a computer-readable medium encoded with a computer program to control the operation of the device,

a computer program segment that generates a plurality of interactions for providing interactive effects with the user,

at least one of a switch, a pressure switch, a sound activated sensor, a voice activated module, a speech recognition module, a magnetic sensor, a light activated sensor, a magnetic sensor, a proximity sensor, a switch on a remote control apparatus, and an accessory that can be plugged into the device to enable a user to interact with the device,

computer memory to store information related to user's responses to interactions, a computer program segment that processes user's responses to derive knowledge information pertaining to how the user has interacted with the device, and

a computer program segment that employs said knowledge information to control the device to operate in a distinct manner that is different from the operation of a similar device with a different knowledge information.

24. Because all elements of at least one claim of the 108 Patent are present in each of the Hatchimals, either literally or under the doctrine of equivalents, Spin Master's past and present sales and offers for sale of the Hachimals infringe at least one claim of the 108 Patent.

PRAYER FOR RELIEF

WHEREFORE, IPD respectfully requests the Court to enter judgment as follows:

- A. That Defendant has directly and indirectly infringed the Ghaly Patent;
- B. That Defendant be ordered to pay damages adequate to compensate IPD for its infringement of the Ghaly Patent, but in no event less than a reasonable royalty, together with prejudgment and post-judgment interest thereon;
- C. That Defendant be ordered to account for any post-verdict infringement and pay no less than a reasonable royalty, together with interest, thereon;
- D. That IPD be granted such other and additional relief as the Court deems just and

proper.

Jury Demand

IPD hereby demands a jury trial as to all issues so triable.

DATED this 29th day of January 2020.

RESPECTFULLY SUBMITTED,

By: /s/ John A. Powell

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